

AN ARGUMENT

Subm 1965

AGAINST

THE ABOLITION

OF THE

CONSTITUTION

OF THE

UNITED STATES.

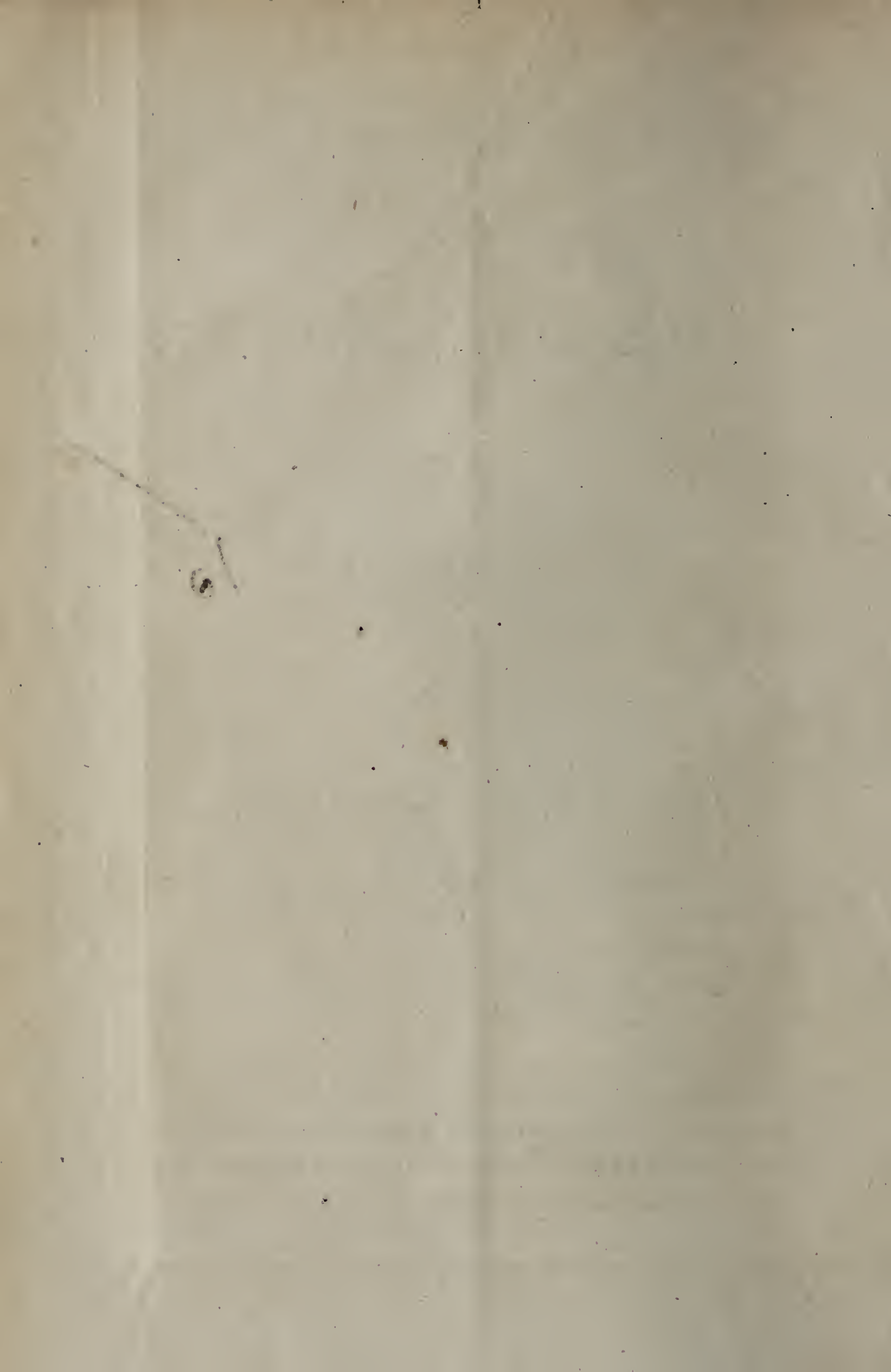


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*(From the Sangamon Tribune, September 27th, 1864.)*

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MR. EDITOR:

THE re-election of Mr. Lincoln is now regarded by all sorts and conditions of men as a foregone conclusion. Since the Pathfinder has found the true path, since Mr. Chase has spoken, and Mr. Wade recanted, even the most unconditional copperhead has despaired of "Little Mac's" election. Thus sure of Mr. Lincoln's success, his supporters very properly feel that there should be no time lost in discussing the policy with which this new lease of power should be accompanied. The Baltimore Platform was not explicit upon this point, and very properly so, since the President did wish the convention to do more than approve his past proclamations and acts. With a wise foresight he required that it should not restrict his freedom of action by any anticipation of Measures. Mr. Lincoln then felt that electoral success was the main question. Now, however, that the blessing of another four years' rule under the best and wisest of statesmen is a foregone conclusion, loyal men feel that they must aid and encourage him in making his second administration even more glorious than his first. It is this noble sentiment which has given rise to an opinion which is gaining ground every day among us, that the time has at last come when the work of our

great political Reformation should be definitively consummated, and that a proclamation should be issued, formally abolishing the Constitution of the United States. It is in opposition to this proposed abolition of the Constitution that I desire to address you some remarks, desiring only that my arguments may be taken for what they are worth, and wishing my loyal brethern distinctly to understand that if the President should issue a proclamation to that effect, I shall be the first to defend it, although much opposed to such a measure as long as he remains undecided concerning it.

I urge, sir, the reformation, not the abolition of the Constitution, its gradual renovation, not its sweeping destruction. We have seen this reformation already happily begun by the efficient and most practical means of his Excellency's great proclamations, and I hope sincerely that the great work will go on to its consummation in the same way and by the same means. I know that many of our friends think that such a course is too tedious. It is indeed with great regret that I feel called upon by civic duty to argue against an opinion which is undoubtedly entertained by the greatest number and wisest portion of the Union men, and which very likely is shared by the President himself: for we know that he often conceals his greatest measures until the proper time for their publication. It was thus that he fooled the Copperheads by calling the emancipation proclamation "a bull against a comet;" a joke of his which made them laugh on the wrong side of their mouths. I wish it also understood that when I oppose the abolition of the Constitution, I do not mean the Constitution as it was before the present administration, but the Constitution as it is, reformed by past proclamations, and perfectible by future ones. I am neither such a blockhead, nor such a Copperhead as to desire the Constitution as it was. I urge, I repeat, its complete reformation; but not its abolition. Of course I acknowledge that the Constitution should not weigh

a feather against the great ends of Union and Emancipation, ends which will justify any means, even the formal and entire abolition of the Constitution. But Abraham Lincoln by a wonderful stroke of political genius has discovered the secret of governing by proclamations, and has found the very means exactly adapted to our present crisis. We have had a wonderful series of such acts, and I desire to see them continued. Beginning with the executive suspension of the habeas corpus, Mr. Lincoln has gone on from step to step, removing the restrictions and completing the defects of the Constitution as it was, until it has at last attained a wholesome vigor in some measure equal to the new energy of our renovated nationality. Every new measure, every new proclamation was immediately ratified by the emphatic approval of the loyal majority, and received, though more slowly, the approbation of a somewhat inefficient Congress. What I ask is that this noble and practical work shall go on with continued success, unimpeded by the restrictions of the absolute letter of the Constitution, and urged on by its new spirit, the spirit of Union and Universal Freedom. From the progress made during Mr. Lincoln's present administration, we are justified in hoping even for greater in his next. Within the last four years the disloyal States have been deprived of their negroes and have been humbled in the dust, while the loyal States have been transformed into mere departments of a strong and imperial Union. Each State is now no more an *imperium in imperio*, but a mere aggregate of counties, as each county is an aggregate of townships. The factious license which, under the name of civil liberty, was formerly accorded to bad citizens, exists no longer. The suspension of the habeas corpus, the censorship of the press, the nullification of an untrustworthy judiciary, the executive regulation of congressional action, and the disciplining of State legislatures have substituted a real for a nominal government.

Thus we see with what ease, in accordance with the war power granted by the Constitution itself, presidential action suits itself to every phase of the present crisis. Mr. Lincoln with great penetration was the first to see that the President's war power had no limit other than the restriction upon his making peace. (For unless Congress be abolished by proclamation, a treaty of peace requires the consent of the Senate.) Jack Cade with a proper appreciation of the war power exclaimed, "my mouth shall be the parliament of England." Mr. Lincoln with a slight alteration of the text of Shakspeare (his favorite author) can now say: "My mouth is the Congress and Parliament of the United States." How easy and simple a course presents itself to him as one emergency arises after another! All he has to do is to issue a proclamation, which a twelve-hundred-dollar clerk can draft "between drinks." If necessary, he at the same time completes, suspends, or changes the Constitution as he thinks fit. The beauty of this course is that we always know where we stand. We take down Hickey from the shelf, and enter the alteration on the margin. If the proclamation does not alter the Constitution, we need not do even that. In either case we know where we are; but God only knows where we will be if the whole Constitution be utterly abolished. The whole wit of man could not concoct proclamations enough to meet the plainest social and political wants of so many millions of people thus suddenly deprived of all rules of action. Our friends must recollect that the Constitution is a code of law, and that society can not exist without laws, and that even the worst laws are blessings compared with the absence of all law. No wise statesman will abrogate a law without substituting another in its place. The very excellence of the proclamation system is that it substitutes a new rule or principle in the Constitution at the very same time that it destroys an old one. If by any accident an omission occurs, the President can issue a supplement in five minutes, a

characteristic of such acts which shows their superiority over acts of Congress, for if any omission or mistake happens in the latter it cannot be remedied except by a tedious and slow process. If Congress has in the meantime adjourned, even that cannot be done. Besides, acts of Congress can have no retroactive effect, while the *ex post facto* operation of a proclamation is just as legitimate as its operation upon future cases. Another excellence of the President's proclamations is that when they change any part of the Constitution they do not always abolish it, but sometimes only suspend it. This was his course in regard to the habeas corpus, which he did not abolish forever, but only temporarily suspended. This could not be the case if the whole instrument were utterly abolished. Our friends should recollect that the time may come when we ourselves may want the habeas corpus and the ten amendments to protect ourselves against our enemies. The mutability of human affairs is great, and the wrath of God may suffer *hard* money changers to get into the temple. We must remember that if the so-called Democratic party had not worshipped the old-fashioned Constitution as much as they worshipped slavery, the Republicans would have been crushed much quicker than the rebellion. No persons ever availed themselves more of civil liberty, habeas corpus, free speech, and state rights than we did in working our way to power. Of course we did not in our hearts believe in any such political absurdities, but, like Mr. Lincoln, we dissimulated with the serpent's wisdom and the dove's harmlessness, well knowing that the holy end of emancipation justified us in using the only practical means within our reach. We must also above all recollect that the Constitution enabled us to provoke the South into putting itself in the wrong. The Constitution, imperfect as it was, was at least a Constitution, and not merely a treaty, so that we could successfully say to the people that the right of secession was absurd, and that the Union was a Union govern-

ment based upon a perpetual Constitution, not a mere Union League deriving a temporary existence from a contract. When the Republican Convention met at Chicago in 1860, we were sure of electing our nominee, since the Democrats had already split at Charleston. Our leaders saw that the golden moment had come in which emancipation might be secured by getting the South to put itself in the wrong. They felt instinctively that if the South could only be drawn into secession, and thus into violating the Constitution, a war might be brought about, and that when it was once begun there was a chance for emancipation. The main thing was to get the South in the wrong. The Convention, therefore, talked nothing but anti-slavery, and the whole Republican party preserved a silence upon the value of the Union which the South mistook for indifference. The Southern States, therefore, seceded without fear of any serious consequences, deluded by the idea that neither Mr. Lincoln, nor any other Republican, valued the Union. During the whole of the winter of 1860-61, while one State after another was seceding, and while a rebellious government was being established at Montgomery, Mr. Lincoln was President elect, and was just as silent about the value of the Union as he is now open mouthed concerning it. He was even reported (I have no doubt correctly) to have said that he would "run the machine as he found it." The war came at last, and even the Breckinridge Democrats supported it as heartily as Mr. Lincoln, and even more heartily than Phillips, Conway, Andrews and the ruling minds of anti-slavery as long as it was merely for the Constitution. But events move quickly in this railroad and telegraph era, and we were soon enabled to change the issue to emancipation. It is true that by doing so we postponed the chance of peace for a long time by consolidating the South, and turned a great many Copperheads from war men into peace men. I think, however, that the latter effect amply compensated for the additional pro-

longation of the war, for it enabled us while securing emancipation at the same time to secure ourselves in power for the period of a generation at least, in compensation for our long and dreary exclusion from office. Now I beg my Union brethren to observe that we were enabled to do all this by the very Constitution which it is proposed to wipe out, for no sane man believes that we could have had war, and consequently emancipation, if the Constitution had not prohibited secession. The silence of Mr. Lincoln concerning the Union when it appeared in the greatest danger, and the indifference which the Republican party and press always affected in regard to the Union, completely deluded the South and enabled us, by acting on their fears through our anti-slavery professions, to lead them into doing wrong. But observe, their secession was only wrong because the Constitution prohibited it, and I think it, therefore, the height of folly to discard absolutely an instrument, which has befriended us so well in the past, which we may need for our own protection in the future, and which is no inconvenience in the present if we only properly *proclamationize* it.

I feel the full force of the arguments of those friends of the Union who urge the entire abolition of the Constitution. They say with much truth, that it is merely an instrument made in the last century under the inspiration of ideas now obsolete in America; that the main object of its framers was to make a government as different as possible from the monarchical governments of Europe, and that in accomplishing that object they overshot the mark, and in framing an anti-monarchical constitution, they made one which was anti-governmental and anti-political; that their fundamental doctrine was, that the government which governs least is the best government, whereas it must be the worst; that the division of political powers into legislative, executive, and judicial, is absurd; that the judiciary is not a political power, but should be confined to matters of private

law only; that to divide the executive and legislative powers between a president and a congress, is to destroy the efficiency of both; that their reunion in the President's proclamations proves how superior is their simultaneous exercise by one and the same functionary; that whatever merit was contained in the Constitution as it came from the Convention signed by General Washington, was utterly destroyed by the ten amendments. I frankly admit the truth of all these propositions, and would not hesitate to abolish the Constitution, if they logically tended to such a conclusion. But they do not do so. The objection drawn from the ten amendments has to-day no force, for the President has erased them from the instrument. The last of the ten perished with Heintzelman's order prohibiting the sale of arms in the West. The objection to the judiciary deciding cases involving political and constitutional principles is now of no moment; for even the Cleveland Convention would admit that the judiciary has been made powerless for such purposes. This objection admits the utility of the judiciary to decide cases in which merely individual interests are concerned. But an abolition of the Constitution would utterly destroy the judiciary, and would leave private disputes without an arbiter; a state of affairs which would be utterly intolerable. The objection to the division of the executive and legislative powers between the President and Congress, is one the full force of which I admit; but it points not to the abolition of the Constitution, but to the abolition of Congress. Now, I have no objection whatever to the abolition of Congress; on the contrary, I consider it the next great step in advance; and I hope that the next proclamation of Mr. Lincoln will embody that measure. Congress is not now merely a useless body, but is also a positive evil. Even if the next Senate and House of Representatives should not contain a single copperhead, its limited but dangerous powers, and tedious and inefficient procedure, might most seriously embarrass Mr.

Lincoln in his proclamations, appointments, and financial disbursements. Upon his shoulders rests the whole responsibility of this awful crisis. Congress cannot be impeached or indicted, but the President may be. It is therefore right and just that he should have all the power who has all the responsibility. But of much more importance than justice to him is the necessity of a strong government to save the Union and the negro; and all history shows that the division of powers can never produce a strong government, but merely a weak, and at best a free one. I am the last man to eulogize James Buchanan, but we all know that if he had had the power of Abraham Lincoln, he would have been able to have prevented the rebellion, had he chosen to do so. We must confess it to be idle to discuss what were his intentions, for he was utterly without any real political power, (especially as Mr. Lincoln's silence, as President elect, concerning the Union, so skillfully deluded the South into the wrong of secession.) Everybody recollects how our constant cry that winter was, "Have we a government?" The plain truth was, that according to the Constitution in its then unproclamationized state, it was impossible to have a government. The President could do nothing but execute a law of Congress, while Congress generally refused to pass the proper law. If it was passed, the Supreme Court was pretty sure to nullify it as unconstitutional. Thank God we have now nullified the Supreme Court; so we have gotten rid of that difficulty; and it now only remains to abolish Congress, in order to obtain a great, good, and strong government, exercised by one single ruler, viz: the President. Many of the extra-governmental elements of our polity which were formerly sources of danger, have, as I have already said, been reformed or abolished; the States have been transformed into mere departments, slavery has been destroyed, the military equality of the negro is a fixed fact, we are now sure of his social equality even to the extent of miscegenation, and civil

liberty now means the liberty of supporting the government and not that of supporting anarchy. It is plain, therefore, that the next fundamental measure that remains to be carried out in order to perfect our Constitution is the abolition of Congress by another proclamation. So far from abolishing the Constitution, it is the consummation of its reformation which is to be effected. Those who demand its abolition, ask for the destruction of the temple at the very moment that the coronation of the edifice is the great but easy task before us. May the great work be speedily accomplished! The first Monday of next December is manifestly the fitting day, for it is the first which would enable Congress to attend its own funeral, and it would be a pity to deprive it of an opportunity of thus supremely manifesting its own loyalty and redeeming once for all its past errors. We then can hope with reason that the new year will usher in that new era of our country's glory, when Union, peace, universal freedom, and the equality of races shall be living realities; when the North and the South, the lion and the lamb, the black and the white, shall lie down together; when there shall be a perfect Union of States, and a perfect Union of races, with a nationalized government, under a proclamationized Constitution, over a miscegenized people completely fused in one single homogeneous and united race of Americans, none of whom shall be Copperheads, and all of whom shall be *Copperskins*.

Your brother in the faith,

COPPERSKIN.

SANGAMONVILLE, *September*, 1864.